SUPREME COURT, U. S.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 389

MRS. AGNES JUNE DILLARD,
Petitioner

vs.

JACKSON'S ATLANTA READY MIX CONCRETE COMPANY, INC.,
Defendant,

Petition For Writ of Certiorari to the Court of Appeals of Georgia

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Petitioner in Certiorari,

vs.

JACKSON'S ATLANTA READY MIX CONCRETE COMPANY, INC.,
Defendant in Certiorari.

PETITION OF MRS. AGNES JUNE DILLARD FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA, AND DIRECT AND CONCISE ARGUMENT AMPLIFYING THE REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Mrs. Agnes June Dillard files this her petition for writ of certiorari to the Court of Appeals of Georgia, for the purpose of having reviewed, corrected, and reversed, the decision and judgmnt of that Court of March 15, 1962 as revised on March 29, 1962, affirming the judgment of the Superior Court of Fulton County, Georgia, in the claim

Case No 80648 of Jackson's Atlanta Ready Mix Concrete Co, Inc. vs Mrs Dillard as Plaintiff in Fi Fa in

Case No. A-74798 as entered on October 12, 1961 overruling ~~Company, Inc. vs. Mr. Dillard, as Plaintiff in Fi. Fa. in Case No. A-74978 as entered on October 12, 1961 overruling~~ and denying her motion as amended for judgment in her favor notwithstanding the verdict for said Claimant. Application for certiorari was duly made to the Supreme Court of Georgia. This application was denied by the Supreme Court of Georgia, without an opinion, on May 21, 1962. Petitioner duly filed with the Supreme Court of Georgia on May 30, 1962, a motion for reconsideration of the denial of her petition for certiorari, and on June 4, 1962 filed a supplement to or condensation of said motion with said court. They were denied by the Supreme Court of Georgia on June 5, 1962.

The Court of Appeals of Georgia is, therefore, the highest Court of this State in which a decision in this case could be had.

CONCISE STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

The decision of the Court of Appeals of Georgia sought to be reviewed was rendered by that Court on March 15, 1962 as revised on March 29, 1962. It appears in 105 Ga. App. Reports on pages 607-14, and in the accompanying record at page 61. The motion of Petitioner for a rehearing was denied by the Court of Appeals of Georgia on March 29, 1962 and entered the same date. (R. 103).

The statutory provision believed to confer on this Court jurisdiction to review the judgment in question by writ of certiorari is Section 1257 (3) of Title 28 U.S.C.A., reading in part as follows: "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

*** (3) By writ of certiorari, *** Where any title, right, privilege or immunity is specially set up or claimed under the Constitution *** of *** the United States."

THE QUESTION PRESENTED FOR REVIEW

The decision of the Court of Appeals of Georgia deprives Petitioner, a citizen of Georgia and of the United States, of her property in the amount ($21,816.00) of her verdict, judgment, and fi. fa., without due process of law and without equal protection of the law, in violation of Section I of the 14th Amendment of the U. S. Constitution, in that the law of Georgia as applied to other persons in like circumstances and similar situations provides that a judgment against a person (natural or artificial) in his or its assumed or trade name is valid and binding, and that such a person is a party to the judgment and is not entitled to file a claim to property levied upon to satisfy the judgment.

CONCISE STATEMENT OF THE CASE CONTAINING THE FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTION PRESENTED

In a suit for bodily injuries, Mrs. Agnes June Dillard recovered a verdict and judgment on Oct. 9, 1959, in the amount of $21,816.00 against a corporation listed in the Atlanta Telephone Directory and the Atlanta City Directory as "Jackson Ready Mix Concrete Co. Inc.," 1000 Seaboard Avenue, N.E., Atlanta, Georgia. Its correct corporate name was "Jackson's Atlanta Ready Mix Concrete Company, Inc." The public record of its charter does not identify it with said address.

The action was against said corporation and the driver of one of its cement-mixing trucks, the negligent operation of which caused Mrs. Dillard's injuries. Both Defendants

were served with the suit and process at 1000 Seaboard Avenue, but neither appeared nor answered. The jury's verdict for Mrs. Dillard is based upon proof submitted by her showing the extent, severity, and permanency of her injuries. The Plaintiff was injured on May 28, 1959 by the Defendants, *and the Georgia Statute of Limitations for this tort is two years.*

Immediately following the entry of said verdict and judgment, the corporate defendant interposed numerous motions and proceedings attacking the sufficiency of the service of process and the conclusiveness of the judgment, and in all of said motions and proceedings the corporation designated itself as *"apparently one of the defendants"* in the above stated suit and judgment. On May 31, 1960 the Sheriff of Fulton County, Georgia levied upon the property of the corporate defendant to satisfy Mrs. Dillard's execution. The Sheriff made the following entry of his levy: *"The said property is levied upon as the property of Jackson's Atlanta Ready Mix Concrete Company, Inc., doing business under the assumed trade or business name of Jackson Ready Mix Concrete Co. Inc. at 1000 Seaboard Avenue, N. E., Atlanta, Georgia, as Defendant in fi. fa: issued from Fulton Superior Court against Jackson Ready Mix Concrete Co. Inc. et al in favor of Mrs. Agnes June Dillard as Plaintiff in fi. fa. Property pointed out by plaintiff's attorney."*

The corporate Defendant thereupon filed a *"Third-Party Claim"* to the property so levied upon, although there were still pending the motions and proceedings which it had filed attacking the sufficiency of the service and the conclusiveness of the judgment. In dismissing one of said motions on June 20, 1960, it stipulated as follows: *"Jackson's Atlanta Ready Mix Concrete Company, after levy*

made, having filed third-party claim in the within matter, the above traverse (of the service of process upon it) is hereby withdrawn and dismissed."

Thereafter the Defendant's claim case came on for trial before Fulton Superior Court and a jury. In addition to the foregoing stipulation and admissions in judicio of the Defendant, the evidence adduced on the trial included, among other things: 1. Claimant's stipulation that one of its employees, E. H. Lambert, had been served with the suit and process on July 27, 1959 at 1000 Seaboard Avenue, (R. 47-8). 2. The production in court and in evidence by Claimant of the copy of the suit and process served upon its said employee, E. H. Lambert, (R. 47-8 and 54). 3. Its stipulation that said copy of the suit and process was the very one served upon its said employee, E. H. Lambert, (R. 47-8 and 54). 4. That its co-defendant, Robert R. Stephens, and the driver of the truck which injured Plaintiff, was on the payroll of Jackson's Atlanta Ready Mix Concrete Company, Inc. at the time of the collision, (R. 43). 5. Admission of H. N. Jackson, Jr., General Manager of the Defendant Corporation, that the truck which injured Mrs. Dillard was its property and that the cement-mixer thereon had been dismounted therefrom. (R. 28).

Upon the completion of the evidence in the claim case of Jackson's Atlanta Ready Mix Concrete Company, Inc., Mrs. Dillard's counsel moved for a directed verdict in her behalf upon the ground that *the positive and uncontradicted evidence and the solemn admissions in judicio of said claimant corporation showed it was the same legal entity and party as the Defendant in fi. fa.* (R. 4-5). Said motion was denied by the Court. The case was then submitted to the Jury, after argument of counsel and charge of the court,

and the Jury returned a verdict for Jackson's Atlanta Ready Mix Concrete Company, Inc. as Claimant. (R. 5, 18).

Mrs. Dillard thereupon moved for a judgment in her behalf non obstante verdicto for Claimant. (R. 19-30). Said motion was denied and Mrs. Dillard appealed therefrom to the Court of Appeals of Georgia, which affirmed the trial court. (R. 4-12).

Mrs. Dillard filed a motion for rehearing upon the ground that the decision of the Court of Appeals deprived her, a citizen of Georgia and of the United States of her property in the amount of her verdict, judgment, and fi. fa., without due process of law and without equal protection of the law, in violation of Section I of the 14th Amendment of the U. S. Constitution, in that the law of Georgia as applied to other persons in like circumstances and similar situations provides that a judgment against a person (natural or artificial) in his or its assumed or trade name is valid and binding, and that such a person is a party to the judgment, and is not entitled to file a claim to property levied upon to satisfy the judgment. (R. 68).

Plaintiff filed a petition with the Supreme Court of Georgia for a writ of certiorari to review, correct, and reverse the erroneous decision of the Court of Appeals upon the same grounds urged in Plaintiff's motion for rehearing in the latter court. (R. 104). It was denied. (R. 105). Plaintiff also filed in the Supreme Court of Georgia, a motion for reconsideration of the denial of her petition for certiorari to the Court of Appeals, and it was likewise denied. (Certificate of Clerk of Supreme Court attached.)

Plaintiff is now filing this petition to the Supreme Court of the United States for the writ of certiorari to review, correct, and reverse the decision and judgment of the Court

of Appeals of Georgia of March 15, 1962 as revised on March 29, 1962 and its denial on the latter date of Petitioner's motion for rehearing.

ARGUMENT AMPLIFYING THE REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT OF CERTIORARI

The question involved in this petition for certiorari is substantial and of gravity and importance in that the decision of the Court of Appeals of Georgia of March 15, 1962 is ARBITRARY AND CAPRICIOUS and deprives Plaintiff, a citizen of Georgia and of the United States, of her property to the extent of the amount ($21,816.00) of her final, valid, and conclusive judgment against Jackson's Atlanta Ready Mix Concrete Company, Inc. in its assumed or trade name and the execution based thereon, without due process of law and without equal protection of the law, in violation of Section I of the 14th Amendment of the U. S. Constitution in the particulars specified in this petition.

Because the two year statute of limitations as to the tort in this case has expired, the decision of the Court of Appeals of Georgia of March 15th as revised on March 29, 1962 (unless reversed upon certiorari by this Court) will forever bar Plaintiff from receiving any compensation whatever from Defendant Jackson's Atlanta Ready Mix Concrete Company, Inc. (masquerading as a third-party claimant) for the serious, painful, disabling, and permanent injuries negligently inflicted upon her by its employee, Robert R. Stephens, on May 28, 1959 while operating its truck in its business, despite the fact that the said corporation was served with suit and process by leaving a copy with its agent or manager, E. H. Lambert, at its place of business at 1000 Seaboard Avenue, N.E., Atlanta, Georgia and it had full opportunity to appear, plead, and defend against

said suit, but failed to do so, and Petitioner obtained, upon proper proof, a valid and binding verdict and judgment against it in its trade name of Jackson Ready Mix Concrete Co. Inc. in the amount of $21,816.00 on October 6, 1959.

To paraphrase the language of the U. S. Supreme Court in *U. S.* vs. *Lee*, 106 U.S. 196, 1 S.Ct. at page 261, IT CANNOT BE, THEN, THAT WHEN IN A SUIT BY ONE PARTY AGAINST ANOTHER PARTY FOR COMPENSATION FOR INJURIES NEGLIGENTLY INFLICTED UPON THE FORMER BY THE LATTER, WHEN THE INJURED PARTY HAS ESTABLISHED HER RIGHT TO COMPENSATION ACCORDING TO ALL THE FORMS OF JUDICIAL PROCEDURE, AND BY THE VERDICT OF A JURY AND A JUDGMENT OF THE COURT AGAINST THE PARTY WHICH NEGLIGENTLY HURT HER AND IN THE NAME UNDER WHICH IT WAS DOING BUSINESS AND WAS DULY AND LEGALLY SERVED, THE INJURED PARTY CAN BE ARBITRARILY AND ILLEGALLY DEPRIVED OF THE COMPENSATION AWARDED TO HER BY THE VERDICT OF THE JURY AND THE JUDGMENT OF THE COURT MERELY BECAUSE THE PARTY WHICH SERIOUSLY INJURED AND DAMAGED HER NEGLECTED TO FILE AN ANSWER TO THE SUIT AND PROCESS DULY AND LEGALLY SERVED UPON IT; THAT, THOUGH THE NATURE OF THE CONTROVERSY IS ONE PECULIARLY APPROPRIATE TO THE JUDICIAL FUNCTION OF THE COURT IN WHICH SHE OBTAINED HER VERDICT AND JUDGMENT AFTER A FAIR AND LEGAL TRIAL. "IF SUCH BE THE LAW OF THIS COUNTRY, IT

SANCTIONS A TYRANNY WHICH HAS NO EXISTENCE IN THE MONARCHIES OF EUROPE, NOR IN ANY OTHER GOVERMENT WHICH HAS A JUST CLAIM TO WELL-REGULATED LIBERTY AND THE PROTECTION OF PERSONAL RIGHTS."

Article I, Section 1, Paragraph 2 of the Georgia Constitution provides that, "Protection to person and property is the paramount duty of government, and shall be impartial and complete."

Article I, Section 1, paragraph 3 of the Georgia Constitution provides that, "No person shall be deprived of life, liberty, or property except by due process of law."

Article XII, Section 1, paragraph 3 of the Georgia Constitution adopted in 1945 provides that in subordination to the U. S. Constitution and the said constitution of Georgia, "All laws now of force in this State, not inconsistent with the constitution, shall remain of force until the same are modified or repealed by the General Assembly."

The record in this case shows without contradiction that under the uniform decisions of the Court of Appeals and the Supreme Court of Georgia, including *Becker* vs. *Truitt,* 39 Ga. App. 286, 146 S.E. 654; *Becker* vs. *Truitt,* 170 Ga. 757, 154 S.E. 262; *Executive Committee of the Baptist Convention of Georgia* vs. *Smith,* 44 Ga. App. 184, 161 S.E. 143; *Eslinger* vs. *Herndon,* 158 Ga. 823, 124 S.E. 169; and *Smith* vs. *Hartrampf,* 105 Ga. App. 40, 123 S.E. 2nd 417, Plaintiff has a valid, binding, and final judgment against Jackson's Atlanta Ready Mix Concrete Company, Inc. in its assumed or trade name of Jackson Ready Mix Concrete Co. Inc. (R. 49). The record also shows without contradiction that the execution based on said valid

and final judgment was levied upon Jackson's Atlanta Ready Mix Concrete Company, Inc. doing business under the assumed or trade name of Jackson Ready Mix Concrete Co. Inc. at 1000 Seaboard Avenue, and that the verdict and judgment for Jackson's Atlanta Ready Mix Concrete Company, Inc. as a third-party claimant of property levied upon is without any evidence whatsoever to support it and contrary to the positive, uncontradicted, and overwhelming evidence *as well as the solemn admissions in judico of said corporation and its officers.*

The said decisions of the Court of Appeals and the Supreme Court of Georgia have been applied to all other persons in like circumstances and similar situations and THEY HOLD THAT A JUDGMENT RENDERED AGAINST A PERSON (NATURAL OR ARTIFICIAL) IN HIS OR ITS ASSUMED OR TRADE NAME IS NOT VOID BUT IS VALID AND BINDING, AND THAT SUCH A PERSON IS A PARTY TO THE JUDGMENT AND IS NOT ENTITLED TO FILE A CLAIM TO THE PROPERTY LEVIED UPON TO SATISFY THE JUDGMENT AND EXECUTION BASED THEREON. NONE OF SAID DECISIONS HAS EVER BEEN MODIFIED OR REPEALED BY THE GENERAL ASSEMBLY OF GEORGIA OR CRITICIZED OR MODIFIED OR REVERSED BY THE APPELLATE COURTS OF GEORGIA.

The Defendant and Claimant, Jackson's Atlanta Ready Mix Concrete Company, Inc., filed motion to set aside the judgment of Petitioner against Jackson Ready Mix Concrete Co. Inc. in Case No. A-74798, in which it stated itself as the defendant and said it was "herein referred to as Jackson's Ready Mix Concrete Co. Inc., one of the defendants

in said matter." AND EXPRESSLY DESIGNATED ITSELF SEVEN TIMES AS THE DEFENDANT. (R. 58) This pleading of Jackson's Atlanta Ready Mix Concrete Company, Inc. constitutes A SOLEMN ADMISSION IN JUDICIO THAT IT IS THE SAME PARTY OR LEGAL ENTITY AS JACKSON READY MIX CONCRETE CO. INC., THE DEFENDANT IN EXECUTION, AND SAID PLEADING HAS NEVER BEEN DISMISSED OR WITHDRAWN. In the case of *Florida Yellow Pine Company et al* vs. *Flint River Naval-Stores*, 140 Ga. 321, 78 S.E. 900, the Supreme Court of Georgia held that a party to a suit will not be allowed to disprove an admission made in his or its pleadings, without withdrawing the same from the record. That case cited *Pinkham* vs. *Gibbs*, 108 Ga. 141, 33 S.E. 945, holding that admissions in a sworn pleading and admissions on the witness stand are both in judicio and cannot be withdrawn so as to deprive the other party of the benefit of them, and that a party voluntarily making the admissions should be bound by them, although he may strike them from the pleading by amendment.

In addition to filing a motion to set aside the judgment in the suit of Mrs. Dillard for damages in Case No. A-74798, Jackson's Atlanta Ready Mix Concrete Company filed two traverses of service in which it referred to itself as the defendant in execution (R. 50-2, 55-7). It also filed in a separate case under No. A-80327, an affidavit of illegality in which it again designated itself as the defendant in execution. (R. 8, 72).

Jackson's Atlanta Ready Mix Concrete Company, Inc. was not listed in its correct corporate name in either the telephone directory or the city directory, and its corporate charter did not identify it in any way with its place of business at 1000 Seaboard Avenue, N.E., Atlanta, Georgia.

but stated its address as 450 South Central Avenue, Hapeville, Georgia. Its truck which injured Petitioner was driven by its employee, Stephens, from 1000 Seaboard Avenue, Atlanta, Georgia, into the car occupied by her. The Defendant led Petitioner to sue it in its assumed or trade name of Jackson Ready Mix Concrete Co. Inc. by designating itself in its accident report to the Atlanta Police Department, to the Georgia State Public Safety Department, and on the trial of the charge against its truck driver in Atlanta Traffic Court, as Jackson Ready Mix Concrete Co. Inc., and by having said trade name listed in both the alphabetical and classified sections of the Atlanta Telephone Directory at its place of business, 1000 Seaboard Avenue, N.E. UNDER A WRITTEN CONTRACT WITH THE TELEPHONE COMPANY SIGNED BY ITS PRESIDENT, A. P. JACKSON. (R. 60).

In the case of *Moody and Wife* vs. *Davis,* 10 Ga. 410-12, the Supreme Court of Georgia held in part as follows: "THE MANDATE RESTRAINS THE JUDGE FROM GOING BEYOND OR OUTSIDE THE LAW, AND ENJOINS HIM TO ENFORCE THE LAW. HE SHALL IN HIS DISCRETION MAKE NO NEW LAW, AND HE SHALL, WITHOUT DISCRETION, GIVE EFFECT TO THE LAWS THAT ARE OF FORCE; AND THIS WE UNDERSTAND TO BE THE DUTY OF A JUDGE IN GEORGIA ***. IT IS THE DUTY OF THE JUDGE TO ENFORCE THE LAWS OF THE STATE, MADE IN ACCORDANCE WITH THE STATE AND FEDERAL CONSTITUTIONS—THE WHOLE LAW, AS IT APPLIES, IN HIS JUDGMENT, TO THE CASES WHICH COME BEFORE HIM. HE HAS NO RIGHT AND NO POWER TO WITHHOLD THE APPLICATION OF ONE SINGLE PRINCIPLE OF LAW

TO A SINGLE CASE OVER WHICH HE HAS JURISDICTION; HE HAS NO DISPENSATION JUSTIFYING OR EXCUSING AN OMISSION TO APPLY THE LAW. ***"

In an address by Mr. Chief Justice Warren at Williamsburg, Virginia on Sept. 25, 1954, commemorating the 200th birthday of the late Chief Justice John Marshall, he stated in part as follows: "As Americans we are proud of our system of government and our standards of justice. *** As a nation we make no pretense except to A PASSION FOR JUSTICE BASED UPON the dignity and RIGHTS OF THE INDIVIDUAL. *** WE BELIEVE THIS KIND OF JUSTICE IS THE RIGHTFFUL HERITAGE OF EVERY HUMAN BEING AND THAT IT IS HIS RIGHT AND DUTY TO ACHIEVE IT. *** For three and a half centuries, Americans, using the experience and wisdom of older countries from which we or our forbears came, have endeavored to develop in this section of the world, a system of government and a body of law WHICH WILL ACCORD JUSTICE TO EVERYONE ***. At times we have been close to failure, but we have never failed in our climb toward the pinnacle of true justice, and we are climbing today to meet the test of Thomas Jefferson that 'THE MOST SACRET OF THE DUTIES OF GOVERNMENT IS TO DO EQUAL AND IMPARTIAL JUSTICE TO ALL ITS CITIZENS.'"

A MERE READING OF THE STATEMENT OF THIS CASE WILL SHOW THAT PETITIONER HAS BEEN DEPRIVED OF THAT "EQUAL AND IMPARTIAL JUSTICE" AND "RIGHTFUL HERITAGE OF EVERY HUMAN BEING" REFERRED TO BY MR. CHIEF JUSTICE WARREN IN HIS ADDRESS.

In the case of *Abie State Bank* vs. *Weaver*, 282 U.S. 765,

51 S. Ct. 252, this Court held that where a Federal Question is presented in a case appealed from State Court, as well as a non-Federal question, it must be determined whether the non-Federal ground independently supports the judgment.

It is apparent from the record in this case that the Court of Appeals of Georgia ignored the Federal Constitutional Question properly raised by Petitioner and adopted its erroneous view of a non-Federal question in order to evade a decision of said Federal Question. In this connection, attention is invited to the fact that Georgia Code Section 6-1607 expressly provides that the Court of Appeals of Georgia shall decide every question made by a specific assignment of error in the bill of exceptions, and Georgia Code Section 6-1606 provides that such a decision shall be announced by a written synopsis of the points decided. Attention is also again invited to the decision of the Supreme Court of Georgia in *Moody and Wife* vs. *Davis*, 10 Ga. 410-12, holding that it is the duty of a Judge in Georgia to enforce the laws of the State, made in accordance with the State and Federal Constitutions—the whole law, as it applies in his judgment, to the cases which come before him, and that he has no right and no power to withhold the application of one single principle of law to a single case over which he has jurisdiction.

Georgia Code Section 110-104 provides that, "Where there is no conflict in the evidence, and that introduced, with all reasonable deductions or inferences therefrom, shall demand a particular verdict, the court may direct the jury to find for the party entitled thereto." Georgia Code Section 110-113 provides, "Whenever a motion for a directed verdict, made at the close of all the evidence is denied, or for any reason is not granted, the party who has moved for a directed verdict, within thirty days after the reception of

the verdict, may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict. ***"

The following decisions of the U. S. Supreme Court also strongly support Petitioner's constitutional right to the grant of the writ of certiorari under the positive and uncontradicted evidence and the solemn admissions in judicio of Defendant in this case and Section I of the 14th Amendment of the U. S. Constitution: *U. S.* vs. *Dixon*, 40 U.S. 141; *Hague* vs. *Committee For Industrial Organization*, 59 S. Ct. 954, 307 U.S. 496; *Williams* vs. *Kaiser*, 65 S. Ct. 363, 323 U.S. 471; *Abie State Bank* vs. *Weaver*, 282 U.S. 765, 51 S. Ct. 252; *Brooklyn Savings Bank* vs. *O'Neill, Etc.*, 324 U.S. 697, 65 S. Ct. 895; *Oyama* vs. *State of California*, 332 U.S. 633, 68 S. Ct. 269; *Angel* vs. *Bullington*, 67 S. Ct. 657, 330 U.S. 183; *Demorest* vs. *City Bank Farmers Trust Company*, 64 S. Ct. 384, 321 U.S. 36; *U. S.* vs. *Pink*, 62 S. Ct. 552, 315 U.S. 203; *Great Northern Ruy. Co.* vs. *State of Washington*, 57 S. Ct. 397, 300 U.S. 154; *Lawrence* vs. *State Tax Commission of Mississippi*, 52 S. Ct. 556, 286 U.S. 276; *Craig* vs. *Harney*, 67 S. Ct. 1249, 331 U.S. 367; *Wolfe* vs. *State of N. C.*, 80 S. Ct. 1482, 364 U.S. 177; *Kern-Limerick* vs. *Scurlock, Etc.*, 74 S. Ct. 403, 347 U.S. 110; *N.A.A.C.P.* vs. *Alabama*, 78 S. Ct. 1163, 357 U.S. 449; *Napue* vs. *People of Illinois*, 79 S. Ct. 1173, 360 U.S. 264.

The equal protection of laws is a pledge of the protection of equal laws. *State of Missouri, ex rel Gaines* vs. *Canada et al*, 305 U.S. 357 (7), 59 S. Ct. 232, 356.

EQUAL PROTECTION OF THE LAW IS SOMETHING MORE THAN AN ABSTRACT RIGHT. IT IS A COMMAND WHICH THE STATE MUST RESPECT—THE BENEFIT OF WHICH EVERY PERSON MAY DEMAND. *Hill* vs. *State of Texas*, 316 U.S.

400, 62 S. Ct. 1159.

In the case of *Shelley et ux* vs. *Kraemer et ux,* 334 U.S. 1, 68 S. Ct. 836, this Court held that State action in violation of the 14th Amendment is equally repugnant to the constitutional commands whether directed by State Statute OR TAKEN BY A JUDICIAL OFFICIAL in the absence of statute, AND THAT WHERE IT IS CLEAR THAT ACTION OF STATE VIOLATES TERMS OF THE FEDERAL CONSTITUTION, IT IS THE OBLIGATION OF THE U. S. SUPREME COURT SO TO DECLARE.

In the case of *Malinski et al* vs. *People of State of New York,* 324 U.S. 401, 65 S. Ct. 781, this Court held:

> "Judicial review of the guaranty of due process imposes on the Federal Supreme Court an exercise of judgment upon the whole course of proceedings to ascertain whether they offend those canons of decency and fairness which express the notions of justice of English-speaking people ***."

Section I of the 14th Amendment of the U. S. Constitution expressly provides that no State shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction, the equal protection of the law."

In construing the U. S. Constitution, the U. S. Supreme Court in the case of *Chambers* vs. *State of Florida,* 60 S. Ct. 472, 309 U.S. 227, Stated:

> "UNDER OUR CONSTITUTIONAL SYSTEM, THE COURTS STAND AGAINST ANY WINDS THAT BLOW AS HAVENS OF REFUGE TO THOSE WHO MIGHT OTHERWISE SUFFER BECAUSE THEY ARE HELPLESS, WEAK, OUT-

NUMBERED, OR BECAUSE THEY ARE NON-CONFORMING VICTIMS OF PREJUDICE AND PUBLIC EXCITEMENT. *** NO HIGHER DUTY, AND NO MORE SOLEMN RESPONSIBILITY RESTS UPON THIS COURT, THAN THAT OF TRANSLATING INTO LIVING LAW AND MAINTAINING THIS CONSTITUTIONAL SHIELD DELIBERATELY PLANNED AND INSCRIBED FOR THE BENEFIT OF EVERY HUMAN BEING SUBJECT TO OUR CONSTITUTION—OF WHATEVER RACE, CREED, OR PERSUASION." (Capitals added.)

In the noted case of *Yick Wo* vs. *Hopkins, Sheriff,* 118 U.S. 356, 6 S. Ct. 1064, this Court held in part as follows:

"*** THE VERY IDEA THAT ONE MAY BE COMPELLED TO HOLD HIS LIFE, OR THE MEANS OF LIVING, OR ANY MATERIAL RIGHT ESSENTIAL TO THE ENJOYMENT OF LIFE, AT THE MERE WILL OF ANOTHER, SEEMS TO BE INTOLERABLE IN ANY COUNTRY WHERE FREEDOM PREVAILS, AS BEING THE ESSENCE OF SLAVERY ITSELF. *** THOUGH THE LAW ITSELF BE FAIR ON ITS FACE, AND IMPARTIAL IN APPLIANCE, YET, IF IT IS APPLIED AND ADMINISTERED BY PUBLIC AUTHORITY WITH AN EVIL EYE AND AN UNEQUAL HAND, SO AS PRACTICALLY TO MAKE UNJUST AND ILLEGAL DISCRIMINATIONS BETWEEN PERSONS IN SIMILAR CIRCUMSTANCES, MATERIAL TO THEIR RIGHTS, THE DENIAL OF EQUAL JUSTICE IS STILL WITHIN THE PROHIBITION OF THE CONSTITUTION. ***" (Capitals added.)

In the case of *Aubry Williams* vs. *State of Georgia,* 211

Ga. 763, 88 S.E. 2nd 376, the Supreme Court of Georgia criticised the decision of the U. S. Supreme Court in the same case in 349 U. S. 375, holding that the ruling of the Georgia Supreme Court in 210 Georgia 665 did not rest upon an adequate non-Federal ground which would deprive Federal Supreme Court of jurisdiction to find that a substantive issue was properly before it and that orderly procedure required a remand to the Georgia Supreme Court for reconsideration of the case. The Georgia Supreme Court accused the U. S. Supreme Court in its decision in that case of violating the 10th Amendment of the U. S. Constitution providing that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people," and stated: "Even though executives and legislators, not being constitutional lawyers, quite often overstep the foregoing unambiguous constitutional prohibition of Federal invasion of State jurisdiction, there can never be an acceptable excuse for a JUDICIAL failure to strictly observe it. This court bows to the Supreme Court on all Federal questions of law BUT WE WILL NOT SUPINELY SURRENDER SOVEREIGN POWERS OF THIS STATE *** THE SUPREME COURT, 349 U.S. 375, 75 S. Ct. 814, undertakes "to remand the case for further consideration, and in their opinion has pointed to Georgia law vesting in the trial judge discretion in ruling upon an extraordinary motion for new trial AND APPARENTLY CONCLUDED THEREFROM THAT THIS COURT SHOULD REVERSE THE TRIAL COURT BECAUSE THAT DISCRETION WAS NOT EXERCISED IN THE WAY THE SUPREME COURT WOULD HAVE EXERCISED IT. *** WE STATE THAT OUR OPINION IN WILLIAMS VS. STATE, 210 Ga. 665, 82 S.E. 2nd 217, IS SUPPORTED BY SOUND AND UNCHAL-

LENGED LAW, CONFORMS WITH THE STATE AND FEDERAL CONSTITUTIONS, and stands as the judgment of all seven of the justices of this court."

YET THE GEORGIA SUPREME COURT IN THE CASE AT BAR IN DENYING PLAINTIFF'S PETITION FOR CERTIORARI AND MOTION FOR RECONSIDERATION HAS UTTERLY IGNORED THE FACT THAT IT THEREBY DEPRIVES PLAINTIFF OF HER PROPERTY IN THE AMOUNT OF HER VERDICT, JUDGMENT, AND FI. FA. AGAINST THE DEFENDANT IN THIS CASE WITHOUT DUE PROCESS OF LAW AND WITHOUT EQUAL PROTECTION OF THE LAW IN VIOLATION OF ARTICLE I, SECTION I, PARAGRAPHS 2 AND 3 OF THE GEORGIA CONSTITUTION AND SECTION I OF THE 14th AMENDMENT OF THE U. S. CONSTITUTION, AND IN VIOLATION OF ALL THE PRIOR DECISIONS OF SAID COURT AND THE COURT OF APPEALS OF GEORGIA ON THE POINT HERE INVOLVED APPLIED TO OTHER PERSONS IN LIKE CIRCUMSTANCES AND SIMILAR SITUATIONS, INCLUDING BECKER VS. TRUITT, 39 Ga. App. 286, 170 Ga. 757; EXECUTIVE COMMITTEE OF THE BAPTIST CONVENTION OF GEORGIA VS. SMITH, 44 Ga. App. 184; ESLINGER VS. HERNDON, 158 Ga. 823; SMITH VS. HARTRAMPF, 105 Ga. APP. 40; MOODY AND WIFE VS. DAVIS, 10 Ga. 410-12; AND CENTRAL OF GEORGIA RAILWAY CO. VS. YESBIK, 146 Ga. 620, AS WELL AS THE UNIFORM DECISIONS OF THE U. S. SUPREME COURT CONSTRUING AND APPLYING THE 14th AMENDMENT TO SUCH CASES.

As stated by this Court in *Williams* vs. *State of Georgia*, 349 U.S. 375, "A state court may not, in the exercise of its

discretion, decline to entertain a constitutional claim while passing upon kindred issues raised in the same manner."

The record in this case shows that the Plaintiff obtained a valid verdict, judgment, and fi. fa. against the Defendant in its assumed or trade name after due and legal service upon it and that she has been ARBITRARILY, CAPRICIOUSLY, AND ILLEGALLY deprived by the Court of Appeals of Georgia of her right to have said fi. fa. levied upon the property of the Defendant to satisfy same, without due process of law and without equal protection of the law, in violation of Section I of the 14th Amendment.

WHEREFORE, Petitioner urges that she is entitled as a matter of absolute constitutional right under Section I of the 14th Amendment to the grant of the writ of certiorari to the Court of Appeals of Georgia and reversal of its arbitrary, capricious, and unconstitutional decision denying her said constitutional rights.

Respectfully submitted,

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ACKNOWLEDGMENT OF SERVICE

Service is hereby acknowledged and copy received of the foregoing petition for certiorari.

This August , 1962.

Counsel for Jackson's Atlanta Ready Mix Concrete Company, Inc.